



December 7, 1999

Lieutenant Brad Lancaster
Amarillo Police Department
200 East 3rd
Amarillo, Texas 79101-1514

OR99-3535

Dear Lieutenant Lancaster:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129992.

The Amarillo Police Department (the "department") received a request for a copy of all police reports in which a named individual is listed as a suspect or offender, including two specifically identified cases. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We agree with the department that to the extent the requestor is asking for any unspecified records in which the named individual is identified as a "suspect," the requestor, in essence, is asking that the department compile that person's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. The department, therefore, must withhold any compilation of the referenced individual's criminal history pursuant to section 552.101. However, the two cases specifically identified by the requestor are not part of a compilation and must be considered separately.

You inform us, and it is clear from the documents submitted to us, that incident report 98-43421 involves juvenile offenders. The portion of the requested information relating to the juvenile offenders is confidential under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. As stated above, section 552.101 requires withholding information made confidential by statute. Section 58.007(c) provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Section 58.007(c) makes confidential law enforcement records concerning juvenile conduct that occurred on or after September 1, 1997. The records at issue are such juvenile law enforcement records, and, as it appears that none of the exceptions to section 58.007 apply, the records are confidential. The department must withhold incident report 98-43421 pursuant to section 552.101 of the Government Code, in conjunction with section 58.007(c) of the Family Code. *See also* Open Records Decision No. 181 (1977). Because we direct the department to withhold all of incident report 98-43421, we will not address the privacy issue raised.

The second specifically requested incident report relates to an adult offender and does not reveal any intimate or highly embarrassing information. In addition, there is a legitimate public interest in its disclosure. As you do not present any other argument against its disclosure, incident report 98-114115 is public information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Patricia Michels Anderson". The signature is fluid and cursive, with the first name "Patricia" being the most prominent.

Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 129992

Encl. Submitted documents

cc: Mr. Darrell Dewey
P O Box 19803
Amarillo, Texas 79114-9803
(w/o enclosures)